



FITCHBURG REDEVELOPMENT AUTHORITY
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166 Boulder Drive, Suite 104 | Fitchburg, MA 01420
978.345.9602 | www.fitchburgredevelopment.com

Fitchburg Redevelopment Authority Request for Proposal Project Engineering Services Switchgear Upgrade.

Procurement Issue Date:	7-23-2024
Due Date & Time:	8-30-2024 @ 1 pm
Informational Meeting/Site Visit:	8-14-2024 @ 10 am
Meeting/Site Visit Location:	FRA Conference Room. 166 Boulder Dr. Suite 104, Fitchburg MA.
Last Day for Questions:	8-28-2024 @ 3pm.

Proposal packages shall be delivered or mailed to:
Robert Hasche, Facilities Manager
Fitchburg Redevelopment Authority
166 Boulder Drive, Suite 104
Fitchburg, MA 01420

Proposal must be submitted in a sealed envelope or packet and properly labeled with the title for this project.

Late or incomplete proposals will be rejected and returned to the sender unopened.

Robert Hasche, Facilities Manager
facilities@fitchburgredevelopment.com

The Fitchburg Redevelopment Authority will be the contracting agent with the selected Engineer(s) or Firm.

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RFP Title	Engineering Services, Switchgear Upgrade Project
Project Address	166 Boulder Drive, Fitchburg, MA
Contracting Agent	Fitchburg Redevelopment Authority
Due Date and Time	8-30-2024 @ 1pm.
Pre-proposal Meeting Date & Time	8-14-2024, 10am.
Pre-proposal Meeting Location	The FRA Conference Room 166 Boulder Dr. Suite 104, Fitchburg MA.
Last Day for Questions	8-28 -2024 @ 3pm.
Tentative Interview Date(s)	9-10-2024 and 9-11-2024
Anticipated Contract Award Date	9-18-2024
Target Contract Commencement Date	10-1-2024
Point of Contact	All information with respect to this solicitation shall be directed through the Facilities Manager, including questions, clarifications, or observations. Respondents shall not contact any FRA employee or Board of Directors member with regard to this solicitation. Doing so may lead to disqualification of the proposal.
Governing Procurement Law	c. 149 §44A 1/2
Number of Copies Required	Submit one (1) signed original submittal package and (1) electronic copy on a standard USB drive.
Assembly of Proposal	Proposal response shall be in single-sided format only, and not bound in any way with metal or plastic binding, or in a binder of any sort, or with multiple staples. A single staple at the top left corner of the document will be accepted, if necessary. <i>Please help reduce waste by following these guidelines!</i>
Opening of Proposals	The submittals will be opened on the date and at the time stated in the solicitation and the name of the person or firm submitting will be read and recorded. Contents of proposal submittals will be opened privately and not disclosed to the public or competing Respondent until the evaluation process is complete.
Contract Award	The contract will be awarded upon recommendation by the Board of Directors after fee negotiations. The contract is only

	valid once the Executive Director has signed the document.
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NOTICE OF REQUEST FOR PROPOSAL

Fitchburg Redevelopment Authority
Project Engineering Services for outdoor Switchgear Upgrade/replacement.
MGL c. 149, §44A ½

The Switchgear Upgrade Project, through the Fitchburg Redevelopment Authority (FRA) Board of Directors, is seeking engineering services for the design of a Switchgear Upgrade Project. The services shall be provided in accordance with the MGL c. 149, §44A ½ and the scope of services developed by the FRA.

Applications will be accepted from qualified candidates having demonstrated experience and expertise in engineering projects of similar scope, magnitude and cost, and specifically showing demonstrated experience in Switchgear and Switchgear Upgrades,

Proposals will be received by Aug. 30th, 2024, at 1:00pm at the FRA's Office, 166 Boulder Drive, Suite 104, Fitchburg, MA, 01420. Submittals will be opened on the date and the time stated in the solicitation and the name of the person or firm submitting qualifications will be read and recorded. Contents of the qualification submittals will be opened privately and not disclosed to the public or competing Respondents until the evaluation process is complete.

This solicitation is being conducted in accordance with the provisions of MGL c. 149, §44A ½, and any resulting contract will be strictly awarded in accordance with the requirements of the solicitation. The FRA reserves the right to waive all informalities not involving price, time, or change in the scope of work and to negotiate contract terms with the successful respondent.

Specifications, Terms and Conditions and Forms may be obtained via the FRA's website at fitchburgredevelopment.com, by clicking on the banner at the top of the homepage. Complete sets of solicitation documents shall be used in preparing proposals; the FRA does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents or for modifications to the documents including electronic conversion.

A pre-proposal meeting will be held on Aug. 14th, 2024, at 10:am at the FRA, located at 166 Boulder Drive, Suite 104, Fitchburg, MA 01420. Interested individuals or firms shall examine all information and materials contained in and with this solicitation. Failure to do so shall be at the Respondent's risk.

Robert Hasche
Facilities Manager

Notice of Solicitation published in the Central Register and on the FRA's official website.

PART 1: PROPOSAL REQUIREMENTS

GENERAL INSTRUCTIONS

1. The FRA may cancel this solicitation, in whole or in part, or may reject all submittals, or may procure only some of the services outlined whenever such action is determined to be fiscally advantageous to the FRA, or if it is otherwise in the best interests of the FRA.
2. The FRA may request that the supplementary information be furnished to assure the FRA that a Respondent has the technical competence, the business and technical organization, and the financial and staffing resources adequate to successfully perform the necessary work.
3. Respondents may correct, modify, or withdraw the original submittals on or before the date and time stated in the legal advertisement. Corrections or modifications shall be in sealed envelopes, clearly marked to indicate the contents, with the name and address of the Respondent. Any late correction or modification to the submittal will not be accepted. A Respondent who wishes to withdraw a submittal must make a request in writing prior to the response deadline.
4. Each Respondent shall be presumed to have read and be thoroughly familiar with these documents. Unfamiliarity with these documents shall in no way relieve any Respondent from any obligation in respect to his/her submittal.
5. It is understood that the submittal to the FRA will remain valid until the execution of the contract. The successful submittal shall be attached thereto and become a part of the contract between the FRA and the chosen Respondent.
6. The Respondent's attention is directed to the fact that all applicable state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over these services shall apply to the contract throughout, and they shall be deemed to be included in the contract the same as though written out in full.
7. All costs involved in preparing the submittal will be borne by the Respondent; the FRA will not be liable for any costs associated with the creation of the proposal.
8. Proposals which are incomplete, conditional, or obscure will be rejected. No award will be made to any firm who cannot satisfy the FRA that there is sufficient ability and sufficient capital to enable the Respondent to meet the requirements

of these specifications. The FRA's decision or judgement on these matters shall be final, conclusive and binding.

9. Response to this solicitation acknowledges acceptance of all sections and requirements of this document. If the proper's submittal does not comply with the requirements of this solicitation, or if an item is not understood in any way, a copy of that section of the solicitation must then be included in the submittal and all its copies must be clearly state the deviation, additions, or other comments.
10. Complete sets of solicitation documents shall be used in preparing any submittal; the FRA does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents, documents provided by third parties, or for modifications to the documents not made by official addenda, including electronic conversion.
11. All responses and information submitted in response to this solicitation are subject to the Massachusetts Public Records Law M.G.L. c. 66, § 10 and c. 4, § 7(26). Any statements in submitted responses that are not inconsistent with the provisions of these statutes shall be disregarded.

DETAILED INSTRUCTIONS

CORI Policy

Massachusetts General Law requires Criminal Offense Record Inquiry (CORI) checks be conducted on individuals commissioned to do work on certain municipal projects. Contractors shall comply with CORI policies by providing CORI forms for all employees to be working on site, when required by the FRA.

Respondent's Representation

Firms submitting a proposal represent and warrant that they are properly familiar with the site and contract documents, with the conditions under which the work is to be performed, and that Respondent has correlated observations with requirements of the contract documents, and that where the contract documents require a given result to be produced, the contract documents are adequate and the firm will produce required results within the negotiated price and that the proposal is made in accordance therewith.

Financial Interest of FRA Employees

Municipal employees and their family members are not allowed to have a financial interest in a contract with the FRA they are employed by. Municipal employees and their family members are also forbidden to solicit or accept gifts, gratuities, or favors from anyone looking to conduct business with the FRA. Incidents of this nature will be reported to the appropriate authorities for investigation.

Non-Collusion

All those doing business with the FRA will be required to certify under penalties of perjury that their quote, bid, or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Responder Tax Status

All those doing business with the FRA will be required to certify under the penalties of perjury, pursuant to Massachusetts General Laws c. 62C, Section 49A, that to the best of their knowledge and belief, they have complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Appropriation of Funds

All contract obligations on behalf of the FRA are subject to prior appropriation to cover the full extent of the contract.

Pre-Proposal

If scheduled, potential Respondents are requested to attend a pre-proposal meeting. A listing of attendees will be kept. Although this is not a mandatory meeting, attendance is strongly recommended.

Questions and Clarifications

1. Respondents shall promptly raise the issue of any ambiguity, inconsistency, or error they discover upon examination of the documents, the work site, or any other conditions which apply to the work.

2. Questions requiring clarification and all other inquiries shall be submitted in writing to the Facility Manager only, prior to the deadline stated in the General Requirements and Specifications, in order to afford the FRA adequate time to respond prior to the deadline for submission of proposals. Should it be found necessary, a written addendum will be incorporated into the solicitation and will become part of the contract.
3. Respondents who have received documents via the FRA's online solicitation posting will be notified of such changes via email. The Respondent shall acknowledge receipt of any and all addendum issued by signing and returning the addenda form with the proposal. Failure to do so shall be cause to reject the submittal as nonresponsive.
4. Questions that may be asked during any pre-proposal meeting should also be sent in writing in order to receive an official response.
5. Respondents should note that oral communications are not binding on the FRA and only written responses by the FRA will be considered.
6. Questions received after the due date will not be responded to unless the FRA determines it necessary.

Submittal Instructions

1. Submit one sealed envelope or box containing the proposal in the format specified, clearly marked on the outside with the name and address of the Respondent, the solicitation number and title, and the due date and time. Submittals must be received per the time frame outlined in the solicitation.
2. Proposals shall be addressed and delivered to the Facility Manager, FRA office, 166 Boulder Dr, Suite 104, Fitchburg, MA 01420. The FRA is open from 7am to 4:30 pm weekdays.
3. The proposal shall include all required forms supplied by the FRA and shall be signed as indicated. Any and all addenda shall be acknowledged with the submittal.

SPECIAL INSTRUCTIONS FOR PROPOSAL DELIVERIES: If the proposal is to be dropped off in person, please go to the Facilities Manager's office. Leave yourself ample time before the deadline time to deliver our proposal. Proposals arriving late or left in any outside receptacle will be rejected and returned unopened.

Opening of Proposals

1. If, at the time of the originally scheduled opening, FRA is closed due to inclement weather or any other unforeseeable event, the due date will be extended until 2:00 pm on the next regular business day, unless otherwise indicated by an addendum issued by the FRA.
2. Proposals will be opened after the due date in the office of the Facility Manager, 166 Boulder Dr, Fitchburg, MA, unless stated otherwise in the documents. This is not a public opening.

Late Responses

A late proposal is one that is delivered after the due date and time. If a proposal is late, it will be rejected as nonresponsive, and as such will be returned unopened to the person submitting the proposal. Should a proposal be received via USPS/UPS/FedEx or any other courier service, it shall be refused upon attempted delivery. If mailed, it shall be returned unopened.

Protests

Any vendor or contractor intending to protest an award is instructed to do so by submitting, in writing, specific contentions as soon as possible after an issue arises, to avoid being considered untimely. All correspondence in this regard must be directed to the Facilities Manager, who will confer with legal counsel and determine the basis for the protest. The FRA will respond in writing within ten (10) days of receipt of the protest.

Minimum Qualifications and Requirements

To be eligible for selection, the respondent must meet certain minimum requirements. Respondents who fail to demonstrate the ability to meet the minimum criteria will not be considered.

- The candidate shall be a Professional Electrical Engineer registered with the Commonwealth of Massachusetts and shall have at least five years of relevant experience in the design and installation of medium-voltage, outdoor switchgear equipment.

In addition to the above the candidate must possess:

- A valid Massachusetts PE registration in Electrical Engineering.

- Professional resources: staffing, administrative and ancillary support services to support contract management and sufficient in capacity to complete the scope of work within the schedule.
- Experience with Massachusetts Public Procurement Laws and Procedures.

Comparative Evaluation Criteria

In addition to the minimum requirements set forth above, all respondents must demonstrate that they have significant experience, knowledge, and abilities with respect to construction projects of this type, particularly involving medium voltage, outdoor switchgear upgrade and installation. The FRA will evaluate responses based on criteria that shall include, but not be limited to:

1. Past performance regarding publicly funded construction, repair, and upgrade projects, including but not limited to number of projects managed, project dollar value, and percentage completed timely.
2. Satisfactory working relationships with other designers, contractors, owners, and local officials.
3. Thorough knowledge of building code and all other codes and regulations related to successful completion of the project.
4. Thorough knowledge of Massachusetts procurement laws, regulations, policies, and procedures.
5. Organizational chart with key personnel and description of time commitment, experience, and references including relevant experience with similar projects that have been successfully completed or are in process.
6. Respondent's financial stability and company history to demonstrate capacity to complete scope of work for project.
7. Respondent's current and projected workload for projects estimated to cost in excess of \$1.5 million.

The FRA will base an initial ranking on respondents using above listed Evaluation Criteria and will choose at least three firms for an interview. The FRA will then establish a final ranking following interviews with short-listed respondents.

The FRA reserves the right to consider any other relevant criteria it may deem appropriate, within its sole discretion, and any other relevant criteria as the FRA may request. The FRA may also seek additional information from respondents.

This RFP, any addenda, and the respondent's submittal will become part of the executed contract. Key personnel identified by the respondent must be contractually committed for the Project. No substitute of personnel or change in sub-consultants shall be allowed without prior written approval of the FRA.

Prior to execution of the contract, the selected respondent will be required to submit to the FRA a certificate of insurance that meets the requirements set forth in the contract.

Also prior to execution of the contract, the fee for services shall be negotiated between the FRA and the selected Respondent to the satisfaction of the FRA in its sole discretion. The selected respondent will be required to provide pricing for all phases specified in the contract at the time of fee negotiation.

Requirements for Content of Response

Submit one (1) hard copy of the response and one (1) electronic version in PDF on standard USB drive.

Cover letter shall be a maximum of two pages in length and shall include;

- Summarize what respondent's firm offers that is unique from others in the field.
- Acknowledgement that the responder understands the scope and requirements.
- Acknowledgement of the contract terms and conditions
- Statement regarding compliance with minimum requirements
- Statement regarding responses to evaluation criteria
- Description of respondent's organization and history
- Description of respondent's approach and ability to perform the work required.
- All proposers must provide owner contact information for five (5) projects of similar nature and scope completed within the last five (5) years on the form provided.
- The signature of the individual authorized to negotiate and execute a contract on behalf of the Respondent.
- Respondent's primary contact name, title, phone number, email, and mailing address.

Substantive Response to Criteria

Respondent shall describe how the Respondent meets the Minimum Qualifications and Requirements and the Comparative Evaluation Criteria above. The Respondent should include at least the following items in the Substantive Response:

1. All Respondents must provide owner contact information for five (5) projects of a similar nature and scope completed within the last five (5) years on the form provided.
2. The Respondents must demonstrate experience of past work is comparable in type and complexity to the work being solicited.
3. Professional registration of Respondents and engineers is required for this project.
4. The name(s) of the Respondent's key individual who will be performing the functions of the Design Engineer must be submitted along with their resume(s) and professional registration(s). The individuals listed shall attend the interview.

5. Provide at least five (5) references with contact phone numbers from other municipal or public agency projects similar in scope, magnitude, and cost. Each of the projects referenced in Respondent's submittal shall include:
 - a) Municipality or public agency, contact name and contact information (including email address)
 - b) Brief narrative of the project
 - c) The original timeline and where the project came in on said timeline (early, late, in progress)
 - d) Original appropriation for the project and where the project came in (under-budget, over-budget, additional appropriation needed due to unforeseen circumstances)

Response Format

Respondents shall provide their response in a resume format listing education, professional licensure, experience, unique training, or additional education that relates to the qualification in a clear and concise format.

Respondents shall include resumes, experience, and qualifications of any proposed consultants that would be utilized by the Respondent in performance of the contract.

Selection Procedures

1. The FRA's Board of Directors has authorized the Facilities Manager to appoint a Selection Committee.
2. The Facilities Manager will review all submitted proposals for compliance with minimum requirements and shall transmit the compliant proposals to the Selection Committee for review.
3. The Selection Committee will identify the highest ranked submittals to be interviewed. Respondents will be ranked, and a recommendation made to identify the top ranked submittal.
4. Fee negotiations will take place with the most qualified Respondent.
5. If unable to successfully negotiate a contract, the FRA will commence negotiations with the next ranked finalist, and so on, until a contract is successfully negotiated and executed.
6. If fewer than three (3) compliant submittals are received, or if the FRA is unable to successfully negotiate a fee and execute a contract, the FRA reserves the right to readvertise for submittals.

Interview

At the discretion of the FRA, an interview may be required prior to award of contract. This interview will be used to further enhance the selection process.

Respondents should be prepared to meet on the day and time indicated in the project schedule.

Award and Contract

1. The FRA shall reject proposals which do not meet the minimum requirements.
2. Proposals will first be evaluated for timely receipt and responsiveness. Those proposals that are received on time and meet the minimum criteria will be ranked according to the evaluation criteria.
3. Prior to award, the FRA will also conduct reference checks, which may include direct contact with provided references, database searches, independent reviews, and first-hand experience of the city where applicable.
4. The FRA may require a complete and detailed Financial Statement prepared by a Certified Public Account, to determine a Respondent's financial stability. The FRA shall make the request to the Respondent and allow five (5) business days to comply.

Contract Execution

1. Respondents are expected to review the sample contract. Unless approved by the FRA, the terms and conditions contained therein are not negotiable.
2. Once the highest-ranking Respondent has been identified as eligible for a contract, the Facilities Manager will draft the final contract. The first signature on any contract shall be the Respondent's signature.
3. A contract packet will be considered complete when returned from the Respondent with all required documents, which may include insurance certificates and approved fee schedules. If any component is missing, the Facilities Manager will not notify the Respondent.
4. In accordance with MGL c.110G, §7 (the Massachusetts Uniform Electronic Transactions Act) the FRA may utilize electronic signature at their own discretion and said electronic signatures shall be legally binding.

Authority to Sign Contracts

1. The Executive Director is the only person authorized to execute a contract on behalf of the FRA. Service agreements, construction contracts, contracts for goods/services, real estate, lease or purchase of equipment, and any document containing terms and conditions, must be signed by the Executive Director, or will be considered non-binding.

2. The Executive Director will not apply their signature to any contract without all prior authorizing signatures being affixed, using the FRA's standard signature block.
3. Upon receiving the Executive Director's signature, the contract is considered fully executed and ready for distribution. One fully executed copy is returned to the Respondent.

Payment Schedule and Fee Explanation

The FRA will negotiate the fee for services dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated project cost, comparison with past project fees, and other considerations. As project cost is one of several factors, a final project cost figure in excess of the initial cost estimate will not, in and of itself, constitute a justification for an increased fee.

Monitoring

On a regular basis, Project Engineer will be monitored for performance. The firm will be notified if there are any issues associated with the service provided. In light of serious infractions, illegal activities, or potential harm to the environment, the FRA will have the authority to cease any and all operations at any time.

PART 2: TECHNICAL INFORMATION AND SCOPE OF WORK

Project Background

The location of the project is 166 Boulder Drive, Fitchburg, MA. 01420, also known as Putnam Place.

Putnam Place is a 185,000 square foot, multi-tenant, mixed use property built in the late 1800's and originally occupied by The Putnam Machine Company. General Electric Company then occupied the building from 1942 to 1995, manufacturing large steam turbines. DRS Power Systems is now the largest of the 7 tenants. The property is owned by the Fitchburg Redevelopment Authority (FRA) and underwent a major renovation in 2004 incorporating office and retail tenant spaces. DRS Power Technology, a defense contractor, occupies the industrial portion of the building. The FRA office as well as facilities personnel are onsite. The FRA is in search of an Electrical Engineer to design and specify the replacement of the buildings approximately 80-year-old electrical utility switchgear equipment. The existing switchgear handles about 180,000 KW/month and a demand of about 800 KVA.

Project Description, Objectives, and Scope of Services

Project components include;

The objective is to procure an Electrical Engineer to design and specify the replacement of the building's antiquated, 13.8 kV, outdoor, electrical service switchgear. The switchgear components are located outside the building. Total capacity will be determined based on engineering analysis of the buildings' current and future requirements. The switchgear is located in a 100-year flood zone and will have to be elevated at least 5 feet. There is an existing steel structure mezzanine of sufficient elevation that may be utilized after a structural engineer analyzes its integrity.

The Engineering scope will include;

The Engineer shall furnish engineering services including investigation of existing conditions, development of designs and drawings to be used in estimating, bidding, permitting and construction. Assist with the bidding process including providing specifications and attending pre-bid conferences. Provide construction services including reviewing submittals, revising drawings, monitoring construction progress and provide an engineering affidavit.

The Engineer will be requested to submit a proposed scope of services and estimated engineering fee based on hourly billing rates established by the service agreement.

The duration of the project is estimated at 2 years due to material/equipment and contractor availability.

The FRA welcomes engineering firms, individual engineers, and/or engineer teams to submit a proposal. For the purpose of this Request for Proposals, "Engineer" shall mean any firm, individual, or team submitting a proposal.

Note;

The major tenant at Putnam place is a National Defense Contractor/manufacturer. Proof of citizenship (passport or birth certificate) is required to be on file for anyone to enter their space.

PART 3: SAMPLE CONTRACT

CONTRACT NO.

CONTRACT TITLE:

CONTRACTING DEPARTMENT:

THIS CONTRACT is made this ____ day of **[insert date]**, by and between **[insert firm name]** with a usual place of business at **[insert Project Engineers legal address]**, and the Fitchburg Redevelopment Authority, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Executive Director, (hereinafter referred to as the FRA).

WITNESSETH that the Project Engineer and the FRA, for the consideration hereinafter named, agree as follows:

In all respects, this Contract shall be governed by and performed consistently with all laws of the Commonwealth of Massachusetts for public design Contracts including but not limited to Massachusetts General Law c. 149 §44A ½. The provisions of the Massachusetts General Laws shall take precedence over any and all other Contract provisions or documents. Any conflicts among provisions and/or between documents shall be resolved and/or interpreted according to the Massachusetts General Laws. The Project engineer warrants that it is familiar with and agrees to abide by all laws of the Commonwealth of Massachusetts.

ARTICLE 1. CONTRACT DOCUMENTS

- a) The FRA and the Project engineer agree that the project Engineers proposal, including any related documents, prices, deliverables, or services promised, and the FRA's solicitation documents, including the specifications, submission requirements, scope of work, drawings, and any other related documents are all incorporated and made part of this Contract as if written herein. These documents form the entire Contract between the parties and there are no other Contracts between the parties.
- b) This Contract is only binding upon, and enforceable against the FRA if the Contract is Signed by both the Project Engineer and the Executive Director.

ARTICLE 2. SCOPE OF THE WORK

The Project Engineer shall furnish all materials, labor, and equipment, and perform all work shown on the Contract documents, and the Project Engineer agrees to meet or exceed all requirements of this Contract and the Contract documents.

ARTICLE 3. TERM OF CONTRACT

This Contract shall commence June 1st, 2024, and expected completion date will be determined based on scope and material/equipment acquisition. The Project Engineer's duties and responsibilities under this contract shall be considered complete when the work has been completed in accordance

with the Contract and approved by the FRA to its reasonable satisfaction. The FRA shall then issue a Certificate of Completion to the Project Engineer.

ARTICLE 4. Payment Schedule:

The agreed upon Fee Schedule is hereby incorporated and made a part of this Contract. Payment for tasks shall be made in accordance with this Schedule and are subject to appropriation at each phase of the entire Project. The agreed upon Fee Schedule shall constitute the entire compensation and payment of expenses to the Project Engineer for completion of engineering duties and obligations under the contract.

The signature of the Executive Director at the time of execution of this contract certifies that sufficient appropriations exist and shall be encumbered to fund the contract price. This contract is subject to appropriation and shall be made only for work performed in accordance with the terms of this contract.

ARTICLE 5. AMENDMENTS

No officer, official, agent, or employee of the FRA shall have the authority to amend, modify or alter this Contractor waive any of its provisions or to bind the FRA by making any promise or representation not contained herein except by amendment, in writing, executed in the same manner as this Contract is executed. The Project Engineer may not rely on any conduct, statements, action, inaction or courses of conduct of the employees or officers of the other party as having changed, modified, or amended this Contract. The FRA shall not be construed as waiving a provision unless the waiver is executed in writing as an amendment to the Contract. No waiver by the FRA of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 6. CONTROL OF WORK AND ADMINISTRATION OF THE CONTRACT

- a) Any of the power, rights, and duties of the Project Engineer may be exercised by the FRA, provided that the FRA shall be under no obligation to do so. The FRA may explicitly overrule in writing any action, determination, or decision of the Designer should the FRA choose to do so, except to the extent that the same would violate applicable law. Except as otherwise specifically provided, the Designer shall decide all questions which may arise as to the conduct, quantity, quality, equality, acceptability, fitness, and rate of progress of the work performed and materials furnished under this Contract and shall decide all questions which may arise as to interpretation of the specifications and drawing, and fulfillment of the Contract.

b) The FRA's designee(s) and the Project Engineer and engineering team may enter upon work, the site, and premises, at any time and the Contract shall provide safe facilities, therefore.

ARTICLE 7. DEBARMENT

Project engineer(s) and team certifies under the pains and penalties of perjury that its agents, subcontractors, and employees are not presently debarred from entering into a public Contract in the Commonwealth of Massachusetts under the provision of MGL c. 29, §29F, or any other applicable debarment provisions of any other Chapter of MGL or any rule or regulation promulgated thereunder.

ARTICLE 8. TELEPHONE, DATA, WI-FI

The contractor shall provide and maintain separate individual telephone, data, and wi-fi service and pay for all calls, data service, and wi-fi service relating to the work.

ARTICLE 9. OBLIGATIONS AND LIABILITY OF OWNER'S PROJECT MANAGER

- a) The Project Engineer shall do all the work necessary for proper performance required by this Contract, in the manner and within the time specified herein. The Project Engineer shall complete the entire work to the reasonable satisfaction of the FRA, and in accordance with the project requirements, at the prices agreed upon. All work furnished under this Contract shall be furnished strictly pursuant to, and in conformance with the specifications, and the instructions of the FRA's designee as given from time to time in writing during the progress of the work, under the terms of this Contract, and in accordance with Contract Specifications.
- b) The Project engineer shall coordinate operations and avoid interference with the operations of any other Contractor who may be employed on other work of the FRA.
- c) Insufficient insurance shall not release the Project Engineer or any member of their team from any liability for breach of its obligations under this Contract. Without limitation, the Project Engineer shall bear the risk of any loss if insurance coverage is insufficient to cover the loss of any work product covered by this Contract.
- d) The Project engineer shall report to the FRA any act inaction in connection with the Project which the Project Engineer believes creates a substantial health or safety risk. Notwithstanding the immediately preceding sentence, the Project Engineer shall not assume responsibility for safety precautions and programs in connection with the Project, which shall remain the sole responsibility of the Contractor or CM at Risk, as the case may be.

- e) The Contract has been entered into on the representation of the Project Engineer that the individuals, consultants, assignments, and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the sub-consultants listed shall take place without the prior written approval of the FRA, except when necessitated by causes beyond the Project Engineers control. If the Project Engineer proposes to replace one of the key members of the Project Engineer's team, the Project Engineer shall propose a person or consultant with qualifications at least equal to the person or firm the Project Engineer proposes to replace. The FRA shall have the right to approve any substitution or replacement or change in status for the person or sub-consultants and such approval shall not be unreasonably withheld.
- f) At the request of the FRA, the Project Engineer shall resolve any situation in which the FRA determines that a member of the Project Engineer's team is failing to perform services in an acceptable manner to the FRA. The FRA shall have the right to direct the removal of any such person or consultant.
- g) The Project Engineer acknowledges that expeditious completion of the Project is of utmost importance to the FRA. The Project Engineer shall complete the services required under this Contract in a prompt and continuous manner. The Project Engineer shall not delay the work of the Designer, Contractor, or CM@Risk. The Project Engineer shall promptly advise the FRA, in writing, any time the Project Engineer knows or should have known through the exercise of reasonable due diligence that the Designer, Contractor, or CM@Risk. performance is jeopardizing the Project Schedule or the Project Budget, provided, however, nothing in this Agreement is intended to require or imply that the Project Engineer is to assume any of the responsibilities of the Designer, Contractor, or CM@Risk, and the Designer, Contractor, or CM@Risk shall be solely responsible for their services and the performance of their obligations under their relevant agreement with Owner.

ARTICLE 10. FRA TO MANAGE CONTRACT

- a) The FRA's Designee shall in all cases determine the amount, quality, acceptability and fitness of the work under this Contract; shall determine all questions in relation to said work thereof and shall in all cases decide every question of fact which may arise relative to fulfillment of this Contract on the part of the FRA and on the part of the Project Engineer. The FRA's decision shall be final and conclusive upon both parties to this Contract. Any differences or conflicts arising between the OPM and other Consultants of the FRA in regard to their work shall be adjusted and determined by the FRA's Designee.
- b) The FRA's Designee shall make all necessary explanations as to the meaning and intention of the specifications and shall give all necessary orders and directions. The order or sequence of execution of work and the general conduct of the work shall be subject to the approval of the FRA's Designee, who shall have authority to direct the order or sequence.

- c) The Project Engineer shall be required to provide a recommendation to the FRA as to the foregoing items promptly.

ARTICLE 11. DISCREPANCIES, ERRORS, AND OMISSIONS

- a) Any correction of errors or omissions may be made by the FRA's Designee when such correction is necessary for the proper fulfillment of the Contract. Where said correction of errors or omissions adds to the amount of work to be done by the Project Engineer, compensation for said additional work shall be made under a written Change Order except where the additional work may be classed under some item of work for which a price is included in the bid submittal.
- b) The Project Engineer shall not be responsible for the acts or omissions of contractors or third parties at the site. The Project Engineer shall not supervise, direct or have control over or the authority to stop any contractor's work, nor shall the Project Engineer's professional activities, nor the presence of the Project Engineer be construed to imply that the Project Engineer has authority over or responsibility for the means, methods, techniques, sequences or procedures of construction, for work site health or safety precautions or programs, or for any failure of contractors to comply with contracts, plans, specifications or laws. The Project Engineer shall take reasonable measures to notify the FRA, Contractor's Project Manager, or the Contractors on site representative, either verbally or in writing, of which it knows or should have known through the exercise or reasonable due diligence that such conditions caused by others that may affect the work; provided, however, nothing in this Agreement is intended to require or imply that the Project Engineer is to assume any of the responsibilities of the Contractor, and the Contractor shall be solely responsible for their services and the performance of its obligations under its relevant agreement with Owner.
- c) Any opinions by the Project Engineer of probable costs of labor, materials, equipment or services to be furnished by others are strictly estimates and are not a guaranty that actual costs will be consistent with the estimates.

ARTICLE 12. PROGRESS SCHEDULE

- a) The rate of progress shall be such that the whole work shall be performed in accordance with the terms of this Contract within the numbers of calendar days after the date of execution of the Contract as stipulated in the Contract documents, unless and except as any part may be delayed under the provisions of this Contract.
- b) No extension of time, or additional fees will be allowed for ordinary delays, inclement weather and accidents, and the occurrence of such will not relieve the Project Engineer from the necessity of maintaining this rate of progress. If delays are caused by acts of God, acts of Government or State, strikes, extra work,

floods or other contingencies clearly beyond the control or responsibility of the Project Engineer, the Project Engineer shall be entitled to as much additional time to perform and complete this Contract as the FRA shall reasonably certify in writing to be equitable.

ARTICLE 13. CHANGE ORDERS

Changes to the Contract require a written change order, signed by all parties to the Contract. The Executive Director may, by written change order, signed by all parties to the original Contract, make an equitable adjustment in the Contract price if alterations to the project require an increase or decrease to the cost of the Change Order will not be honored and will result in non-payment for such services or work performed.

ARTICLE 14. FAILURE TO COMPLETE WORK ON TIME

The whole work shall have been performed in accordance with the terms of the Contract on or before the date stated in the proposal for completion or the date to which the time of completion shall have been extended under the provisions of this Contract.

ARTICLE 15. NON-PERFORMANCE

In the case of any material default on the part of the Project Engineer with respect to any of the terms of this Contract, the FRA shall give written notice thereof, and if said default is not made good within such reasonable time as the FRA shall specify in writing, the FRA shall notify the Project Engineer in writing that there has been a breach of the Contract and thereafter the FRA shall have the right to secure the completion of the work remaining to be done on such terms and in such manner as the FRA shall determine, and the Project Engineer shall pay for the completion of such work and reimburse the FRA for all reasonable expenses incurred by reason of said breach. The Project Engineer in case of such breach shall be entitled to receive payment only for work completed reasonably satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the Project Engineer shall be determined by the FRA and certified to the Project Engineer. The FRA shall be reimbursed by the Project Engineer for the cost of reasonable additional services required by the FRA in the case of a breach.

ARTICLE 16. TERMINATION

This Contract may be terminated by either party upon not less than seven days written notice should the other party substantially fail to perform in accordance with the terms of this Contract through no fault of the party initiating the termination. Upon termination, Project Engineer shall transmit a bill to the FRA for services satisfactorily performed through termination according to the Fee Schedule. No

further payment shall be due to the Project Engineer beyond the date of termination.

ARTICLE 17. PAYMENT

- a) The Project Engineer shall be compensated in accordance with the Fee Schedule for the reasonably satisfactory performance of services pursuant to this Contract. The Project Engineer shall submit invoices to the FRA on a monthly basis in accordance with the Payment Schedule. The FRA shall make payments to the Project Engineer within thirty (30) days of approval of the invoice, which approval shall not be unreasonably withheld or delayed.
- b) Except as otherwise provided, the services eligible for payment shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, reasonable legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project.
- c) When the Project Engineer receives payment, the Project Engineer shall promptly make payment to each sub-consultant whose work was included in the work for which such payment was received.
- d) The acceptance by the Project Engineer of the last payment after completion of the Scope of Work, or in the event of termination of the Contract, shall in each instance, operate as and be a release to the FRA and their employees and agents, from all claims of the Project Engineer and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Project Engineer to the FRA with, or prior to, the last invoice.

ARTICLE 18. CONTRACT CONDITIONS SPECIFICALLY REQUIRED BY LAW

- a) Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.
- b) If funding for this Project is provided by the Commonwealth of Massachusetts, in whole or in part (such as reimbursements, grants and the like), then the FRA shall incorporate into this Contract the current applicable minority-owned business enterprise (MBE) and women-owned business enterprise (WBE) participation goals, as determined by DCAMM. Reductions or waivers of these goals may be permitted by the FRA where the size, nature or location of the project makes achieving such levels of MBE or WBE participation unfeasible.

- c) This Contract is subject to the Supplemental Equal Opportunity Anti-Discrimination and Affirmative Action Program (EEO/AA).

ARTICLE 19. MBE/WBE PARTICIPATION GOALS

If funding for this Project is provided by the Commonwealth of Massachusetts, in whole or in part (such as reimbursements, grants and the like), the Project Engineer will work with the FRA to track and report the current applicable minority-owned business enterprise (MBE) and women-owned business enterprise (WBE) participation goals, as determined by Mass. General Laws. Currently, these goals are 4.2% MBE, and 8/8% WBE for construction and 6.6% MBE and 15% WBE for design.

ARTICLE 20. WORKFORCE PARTICIPATION GOALS

If funding for this Project is provided by the Commonwealth of Massachusetts, in whole or in part (such as reimbursements, grants, and the like), the Project Engineer will work with the FRA to track and report Workforce Participation Goal Requirements in accordance with MGL c. 149§ 44A(2)(G) which are currently 6.9% for women workers and 15.3% for minority workers.

ARTICLE 21. WAGE RATES

The Project Engineer shall work with the FRA to track and report compliance with MGL c. 149, §26-27H whereas the Contractor and every Subcontractor shall file weekly certified payroll records with the FRA for all employees who have worked on the project.

ARTICLE 22. PERFORMANCE EVALUATION

- a) Performance evaluation is a component of the FRA's contract management protocol. Evaluation will be conducted by FRA personnel and/or the FRA's representative(s) using direct monitoring, indirect monitoring, survey, interview or milestone reviews.
- b) Evaluations may include written reports and other documents regarding the Project Engineer's performance, and any written Project Engineer's responses or documents. All evaluation material and supporting documentation will be maintained in the Project Engineer's file, and will be considered as a "public record." The evaluation shall be part of the record that the FRA is required to review and may be considered in determining future Contract eligibility. Opinions are not statements of fact, and the Project Engineer shall not institute suit based on statements of opinion made by the FRA or its employees, officers or representatives.

ARTICLE 23. SUBCONTRACTING

- a) The Project Engineer may employ sub-consultants, subject to the prior written approval of the FRA. The employment of sub-consultants shall not in any way relieve the Project Engineer from its responsibilities under this Contract. Nor shall the FRA's approval of a sub-consultant in any way relieve the Project Engineer from its responsibilities under this Contract.
- b) The Project Engineer shall be responsible for all compensation to be paid to the sub-consultant. No sub-consultant shall have recourse against the FRA for payment of monies alleged to be owed by the Project Engineer, and the Project Engineer shall include in all contracts the language so providing.
- c) The use of a subcontractor shall not alter the fee schedule or any other provision regarding fees contained in this Agreement unless otherwise agreed in writing by all parties.

ARTICLE 24. OWNERSHIP OF DOCUMENTS

- a) The FRA shall furnish to the Project Engineer all available plans, specifications and data regarding the operations, including, but not limited to current policies related to the operation and maintenance of the facility, schedule(s) of fees, rates for services, both annual and or long term fees assessed, existing infrastructure, facilities and/or structural plans, reports, evaluations and all documentation and all relevant data in the possession of the FRA. Data may consist of historical drawings, construction records and records of existing conditions available from FRA records. The Project Engineer shall be entitled to use documents and information the FRA provides, however the FRA does not warranty or guaranty the accuracy or completeness of any document or information provided. The Project Engineer may be provided with copies of original documents that may be removed by the Project Engineer and taken offsite. It will be the FRA's determination what original records, if any, may be removed from the FRA's premises.
- b) All documents prepared by the Project Engineer in conjunction with this contract, including but not limited to, plans, specifications, cost estimates and grant related documents shall be the property of the FRA. The Project Engineer shall not be responsible for any claims or damages which may occur by virtue of use of incomplete documents by the FRA. The Project Engineer shall not be responsible for any claims or damages which may occur by virtue of the use of the documents for any purpose other than that for which they were intended.

ARTICLE 25. PROFESSIONAL RESPONSIBILITY

- a) The Project Engineer shall be responsible for the professional and technical accuracy and the coordination of the work furnished and shall meet the approved schedule and submittal dates established in this Agreement. The Project Engineer shall meet the requirements and mandates of all Commonwealth of Massachusetts and Federal laws and regulations as they relate to the project.

- b) The Project Engineer shall furnish appropriate competent professional services for the work contracted so that detailed checking or reviewing by the FRA is not necessary.
- c) The work performed by the Project Engineer shall conform to the professional standard of care and practice customarily expected of those engaged in performing comparable work, the personnel furnish said services shall be qualified and competent to perform adequately the services assigned to them, and the recommendations, guidance and performance of such personnel shall reflect such standards of professional knowledge and judgment.
- d) The Project Engineer shall abide by and thoroughly acquaint his employees, consultants and sub-consultants with the provisions of the Commonwealth of Massachusetts General Laws including but not limited to statutes governing public construction projects and designer services.
- e) Neither the FRA's review of, approval or acceptance of, nor payment for, any of the services furnished, shall be construed to operate as a waiver of any rights or cause of action the FRA may have under this Agreement.

ARTICLE 26. RESPONSIBILITIES OF FRA

The FRA shall:

- a) Furnish timely and accurate information, and render approvals and decisions, as expeditiously as possible for the orderly progress of the work.
- b) Furnish data, to whatever extent is available, to the Project Engineer in a timely and expeditious manner, including, surveys, building plans, structural, mechanical, chemical or other test data, tests for air and water pollution, tests for hazardous materials, photographs, utility information, and any other information the Project Engineer deems necessary to make informed and reliable decisions.
- c) Schedule and coordinate meetings and facilitate communications between the Project Engineer and the FRA.
- d) Provide prompt written notice to the Project Engineer, if the FRA observes or becomes aware of any fault or defect in the project, or nonconformance with the contract documents.
- e) For the purposes of facilitating the gathering of information for design purposes in the most efficient manner, the FRA shall permit the Project Engineer's staff reasonable access to, and use of, office equipment, including but not limited to, computers, scanner, telephone, facsimile, and copiers, provided such access does not interfere with the normal operations of the office.
- f) Meet with the Project Engineer to provide and exchange data throughout the duration of the project.

ARTICLE 27. TIME FOR COMPLETION

- a) The Project Engineer shall commence work upon receipt of a fully executed, written contract, signed by all parties to the Agreement authorizing and specifying the work to be performed. The Project Engineer shall agree to

complete all services within the mutually agreed upon time for completion limit established in the Schedule of Tasks.

- b) If Additional Services are added to the SCOPE OF SERVICES by amendment, the period of performance shall be specified by the FRA in the amendment as mutually agreed upon with Project Engineer.
- c) The Project Engineer shall have no claim for damage for delay or hindrance. In the event of delay or hindrance not the fault of the Project Engineer, an extension of time shall be the Project Engineer's sole remedy.

ARTICLE 28. GOVERNING LAW

This Contract and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations, and orders.

ARTICLE 29. BINDING CONTRACT AND ASSIGNMENT OF INTEREST

This Contract shall be binding upon the FRA and the Project Engineer and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the FRA and the Project Engineer. Neither the FRA nor the Project Engineer shall assign, sublet or transfer any interest in this Contract without the written consent of each other, and such consent shall not be unreasonably withheld.

ARTICLE 30. INSURANCE

- a) The Project Engineer shall, at its own expense, obtain and maintain insurances as follows:
 - 1. Commercial General Liability insurance with coverage limit in the amount of \$1,000,000 for property damage and bodily injury and \$3,000,000 in the aggregate for property damage and bodily injury liability.
 - 2. Auto Insurance with coverage for owned, hired, and non-owned vehicles and in the amount of at least \$1,000,000 per event per property damage and bodily injury and \$1,000,000 in the aggregate for such claims.
 - 3. Professional Errors and Omissions Liability Insurance in the amount of at least \$3,000,000 per event and \$3,000,000 in the aggregate for such claims. The maximum allowable deductible is \$100,000.00. If Professional Liability Insurance is written on a claim-made basis, rather than an occurrence basis, it shall continue in full force and effect for three (3) years following the completion of the Consultant's contract.
 - 4. Umbrella/Excess Liability Insurance in the amount of at least \$5,000,000 per event per and \$5,000,000 in the aggregate for such claims.
 - 5. Worker's Compensation and Employer's Liability Insurance as required by Massachusetts Law or in the amount of at least \$5,000,000 per event and \$5,000,000 in the aggregate for such claims which ever provides for greater coverage.
 - 6. Valuable Papers in the amount of at least \$100,000 for such claims.

- b) The Project Engineer shall name the FRA, its employees, agents and representatives as an additional insured on said policies only to the extent of the indemnity agreed in this Agreement.
- c) Companies providing insurance coverage must be licensed to transact business in the Commonwealth of Massachusetts.
- d) The Project Engineer shall furnish Certificates of Insurance prior to commencement of this Contract naming the FRA, etc. as an additional insured as set forth above.
- e) Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Contract. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the FRA at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.
- f) The Certificate of Insurance shall be provided to the FRA in accordance with the terms stated. Certificates shall display each type of insurance, insurance company, police number, amount of insurance and policy effective and expiration dates, and the NAIC number assigned to the insurance company. The Certificate holder shall be listed as the Chief Procurement Officer, FRA. The insurance shall provide that it shall not be cancelled, materially changed or suffer a refusal of renewal until after, at least, thirty days written notice has been issued to the Certificate holder.
- g) The Owner shall maintain its current insurance or its substantial equivalent as in existence now and throughout the course of performance of this contract.

ARTICLE 31. INDEPENDENT CONTRACTOR

All of the services to be performed under the terms of this Contract will be rendered by the Project Engineer as an independent Consultant. None of the terms of this Contract shall create a principal-agent, master-servant or employer-employee relationship between the FRA and the Project Engineer.

ARTICLE 32. SEVERABILITY

If a court declares one or more of the provisions of this Contract invalid, the validity of the remaining provision of this Contract shall not be affected thereby.

ARTICLE 33. DISCRIMINATION

In the performance of this Contract, the Project Engineer shall provide equal employment opportunities for all persons, regardless of race, color, religion, creed, sex, age, national origin, disability or political affiliation. The Project Engineer shall comply with the Americans with Disabilities Act.

ARTICLE 34. CONFLICT OF INTEREST AND NON-COLLUSION

By execution of this Contract with the FRA, the Contractor acknowledges that the FRA is a municipal agency for the purposes of MGL c. 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the Contractor based on said statute. Municipal employees and their family members are not allowed to have a financial interest in a Contract with the municipal agency they are employed by. Municipal employees and their family members are also forbidden to solicit or accept gifts, gratuities, or favors from anyone looking to conduct business with the FRA. Incidents of this nature will be reported to the appropriate authorities for investigation.

ARTICLE 35. CONFIDENTIALITY

- a) For all Contracts involving the Project Engineer's access to personal information as defined in MGL c. 93H, and personal data, as defined in MGL c. 66A, or access to systems containing such information or data, the Project Engineer certifies to protect any and all information and data.
- b) The Project Engineer shall also protect the physical security and restrict any access to personal or other FRA data in the Project Engineers' possession or used by the Project Engineer in the performance of this Contract, which shall include, but is not limited to the FRA's public records, employee records, document, digital and electronic files, software, equipment, or systems.

ARTICLE 36. INDEMNIFICATION

The Project Engineer shall indemnify, defend, and save harmless the FRA and all of the FRA's officers, agents and employees from and against all damages, liabilities, actions, suits, proceedings, demands, losses, costs and expenses (including reasonable attorneys' fees) and claims of liability of every name and nature, including costs of defending any action, for or on account of any injuries to persons or damage to property of the FRA or any person, firm, corporation or association arising out of or resulting from any negligent act or omission, or willful misconduct of the Project Engineer, sub-contractors and its and their agents or employees in the performance of the work covered by this Contract, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this Contract. The existence of insurance shall in no way limit the scope of this indemnification. In the event of a claim or suit to which the foregoing indemnification, defense and hold harmless applies, the indemnified party agrees to the following: (a) to give the Project Engineer prompt notice of any such claim; (b) to cooperate with the reasonable requests of the Project Engineer in the defense of any such claim; (c) to permit the Project Engineer to defend any such claim with counsel of its own choosing; and (d) not to settle any such claim without the Project Engineer's prior written consent.

Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if the party has knowledge of the possibility of such damages.

This Agreement shall not waive or abrogate the application of MGL c. 258, as the same may be amended from time to time.

ARTICLE 37. MISCELLANEOUS PROVISIONS

- a) This Contract shall be binding upon the FRA and the Contractor and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the FRA and the Project Engineer. Neither the FRA nor the Project Engineer shall assign, sublet or transfer any interest in this Contract without the prior written consent of each other, and such consent shall not be unreasonably withheld.
- b) No public official, employee, or agent of the FRA shall have any personal liability for the obligations of the FRA set forth in this Contract.

ARTICLE 38. CONSENT TO VENUE

The Project Engineer agrees that it shall commence and litigate all actions or proceedings arising in connection with this Contract exclusively in the Fitchburg District Court or in the Worcester Superior Court, both of which are located in the County of Worcester, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of the Project Engineer commencing or prosecuting any litigation against the FRA, with respect to or arising out of this Contract, in any court or forum other than those specified in this paragraph. It is further agreed that the parties to this Contract hereby waive their rights to a jury trial.

ARTICLE 39. NOTICE

Notices to the Project Engineer shall be deemed given when delivered to the firm's field office on site, or when delivered by United States Postal Service to the Contractor's address specified in the Contract, or when delivered by constable or courier to either location.

All notices to the FRA under this Contract shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to the Chief Procurement Officer, FRA, 166 Boulder Dr, Suite 104, Fitchburg, MA 01420.

PART 4: REQUIRED FORMS

THE FOLLOWING FORMS MUST BE SIGNED AND INCLUDED WITH YOUR PROPOSAL

**DO NOT RETURN ENTIRE SOLICITATION – ONLY THESE IN PART 4 SHOULD BE INCLUDED
WITH PROPOSAL**

CERTIFICATION OF NON-COLLUSION AND GOOD FAITH

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any

natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

COMPANY NAME _____ DATE _____

BY: SIGNATURE AND TITLE

PRINT NAME

STATEMENT OF TAX COMPLIANCE

Pursuant to Massachusetts General Laws c. 62C, Section 49A, I certify under the penalties of perjury that to the best of my knowledge and belief, the bidder has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

COMPANY NAME _____ FEDERAL TAX ID NUMBER _____

BY: SIGNATURE AND TITLE

PRINT NAME

Your social security or tax identification number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

CERTIFICATE OF AUTHORITY/CORPORATE VOTE OF AUTHORIZATION

At a duly authorized meeting of the Board of Directors of the

(Name of Corporation)

Held on _____, 20__ Directors were present or waived notice, it was voted that _____ be and is

(Officer Name) (Title)

hereby authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or bond of obligation in this company's name on its behalf of such Officer under seal of the company shall be valid and binding upon this company.

A true copy of the record, (Corporate Seal)

ATTEST: _____

I hereby certify that I am the _____ of the
(Title)

(Name of the Corporation)

That _____ is the duly elected _____
(Officer Name) (Title)

Of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Signature: _____ DATE _____

Printed Name and Title: _____

*The company's Corporate Vote may be substituted for the Certificate of Authority.